

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2015

Chapter 460, Laws of 2005

59th Legislature
2005 Regular Session

DRUG OFFENDER SENTENCING ALTERNATIVE

EFFECTIVE DATE: 10/01/05

Passed by the House April 19, 2005
Yeas 64 Nays 34

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 12, 2005
Yeas 46 Nays 1

BRAD OWEN

President of the Senate

Approved May 13, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2015** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 13, 2005 - 3:22 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2015

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington **59th Legislature** **2005 Regular Session**

By House Committee on Appropriations (originally sponsored by Representatives Kagi, O'Brien, Hinkle, Fromhold, Darneille, Upthegrove, Tom, Kenney and Dickerson)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to judicially supervised substance abuse treatment;
2 reenacting and amending RCW 9.94A.660; creating a new section; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.660 and 2002 c 290 s 20 and 2002 c 175 s 10 are
6 each reenacted and amended to read as follows:

7 (1) An offender is eligible for the special drug offender
8 sentencing alternative if:

9 (a) The offender is convicted of a felony that is not a violent
10 offense or sex offense and the violation does not involve a sentence
11 enhancement under RCW 9.94A.533 (3) or (4);

12 (b) The offender has no current or prior convictions for a sex
13 offense at any time or violent offense within ten years before
14 conviction of the current offense, in this state, another state, or the
15 United States;

16 (c) For a violation of the Uniform Controlled Substances Act under
17 chapter 69.50 RCW or a criminal solicitation to commit such a violation
18 under chapter 9A.28 RCW, the offense involved only a small quantity of

1 the particular controlled substance as determined by the judge upon
2 consideration of such factors as the weight, purity, packaging, sale
3 price, and street value of the controlled substance; ~~((and))~~

4 (d) The offender has not been found by the United States attorney
5 general to be subject to a deportation detainer or order and does not
6 become subject to a deportation order during the period of the
7 sentence;

8 (e) The standard sentence range for the current offense is greater
9 than one year; and

10 (f) The offender has not received a drug offender sentencing
11 alternative more than once in the prior ten years before the current
12 offense.

13 (2) A motion for a sentence under this section may be made by the
14 court, the offender, or the state. If ~~((the standard sentence range is~~
15 ~~greater than one year and))~~ the sentencing court determines that the
16 offender is eligible for this alternative ~~((and that))~~, the court may
17 order an examination of the offender. The examination shall, at a
18 minimum, address the following issues:

19 (a) Whether the offender suffers from drug addiction;

20 (b) Whether the addiction is such that there is a probability that
21 criminal behavior will occur in the future;

22 (c) Whether effective treatment for the offender's addiction is
23 available from a provider that has been licensed or certified by the
24 division of alcohol and substance abuse of the department of social and
25 health services; and

26 (d) Whether the offender and the community will benefit from the
27 use of the alternative ~~((, the judge may)).~~

28 (3) The examination report must contain:

29 (a) Information on the issues required to be addressed in
30 subsection (2) of this section; and

31 (b) A proposed treatment plan that must, at a minimum, contain:

32 (i) A proposed treatment provider that has been licensed or
33 certified by the division of alcohol and substance abuse of the
34 department of social and health services;

35 (ii) The recommended frequency and length of treatment, including
36 both residential chemical dependency treatment and treatment in the
37 community;

1 (iii) A proposed monitoring plan, including any requirements
2 regarding living conditions, lifestyle requirements, and monitoring by
3 family members and others; and

4 (iv) Recommended crime-related prohibitions and affirmative
5 conditions.

6 (4) After receipt of the examination report, if the court
7 determines that a sentence under this section is appropriate, the court
8 shall waive imposition of a sentence within the standard sentence range
9 and impose a sentence ((that must include)) consisting of either a
10 prison-based alternative under subsection (5) of this section or a
11 residential chemical dependency treatment-based alternative under
12 subsection (6) of this section. The residential chemical dependency
13 treatment-based alternative is only available if the midpoint of the
14 standard range is twenty-four months or less.

15 (5) The prison-based alternative shall include:

16 (a) A period of total confinement in a state facility for one-half
17 of the midpoint of the standard sentence range. During incarceration
18 in the state facility, offenders sentenced under this subsection shall
19 undergo a comprehensive substance abuse assessment and receive, within
20 available resources, treatment services appropriate for the offender.
21 The treatment services shall be designed by the division of alcohol and
22 substance abuse of the department of social and health services, in
23 cooperation with the department of corrections((-));

24 ((The court shall also impose:

25 (a+)) (b) The remainder of the midpoint of the standard range as a
26 term of community custody which must include appropriate substance
27 abuse treatment in a program that has been approved by the division of
28 alcohol and substance abuse of the department of social and health
29 services. If the department finds that conditions have been willfully
30 violated, the offender may be reclassified to serve the remaining
31 balance of the original sentence. An offender who fails to complete
32 the program or who is administratively terminated from the program
33 shall be reclassified to serve the unexpired term of his or her
34 sentence as ordered by the sentencing court;

35 ((+b)) (c) Crime-related prohibitions including a condition not to
36 use illegal controlled substances;

37 ((+e)) (d) A requirement to submit to urinalysis or other testing
38 to monitor that status; and

1 ~~((d))~~ (e) A term of community custody pursuant to RCW 9.94A.715
2 to be imposed upon failure to complete or administrative termination
3 from the special drug offender sentencing alternative program.

4 (6) The residential chemical dependency treatment-based alternative
5 shall include:

6 (a) A term of community custody equal to one-half of the midpoint
7 of the standard sentence range or two years, whichever is greater,
8 conditioned on the offender entering and remaining in residential
9 chemical dependency treatment certified under chapter 70.96A RCW for a
10 period set by the court between three and six months. If the court
11 imposes a term of community custody, the department shall, within
12 available resources, make chemical dependency assessment and treatment
13 services available to the offender during the term of community
14 custody. The court shall impose, as conditions of community custody,
15 treatment and other conditions as proposed in the plan under subsection
16 (3)(b) of this section. The department may impose conditions and
17 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
18 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
19 during the period of residential chemical dependency treatment, and
20 schedule a treatment termination hearing for three months before the
21 expiration of the term of community custody;

22 (b) Before the progress hearing and treatment termination hearing,
23 the treatment provider and the department shall submit written reports
24 to the court and parties regarding the offender's compliance with
25 treatment and monitoring requirements, and recommendations regarding
26 termination from treatment. At the hearing, the court may:

27 (i) Authorize the department to terminate the offender's community
28 custody status on the expiration date determined under (a) of this
29 subsection; or

30 (ii) Continue the hearing to a date before the expiration date of
31 community custody, with or without modifying the conditions of
32 community custody; or

33 (iii) Impose a term of total confinement equal to one-half the
34 midpoint of the standard sentence range, followed by a term of
35 community custody under RCW 9.94A.715;

36 (c) If the court imposes a term of total confinement under (b)(iii)
37 of this subsection, the department shall, within available resources,

1 make chemical dependency assessment and treatment services available to
2 the offender during the terms of total confinement and community
3 custody.

4 (7) If the court imposes a sentence under this section, the court
5 may prohibit the offender from using alcohol or controlled substances
6 and may require that the monitoring for controlled substances be
7 conducted by the department or by a treatment alternatives to street
8 crime program or a comparable court or agency-referred program. The
9 offender may be required to pay thirty dollars per month while on
10 community custody to offset the cost of monitoring. In addition, the
11 court ~~((shall))~~ may ~~((three or more))~~ any of the following
12 conditions:

13 ~~((+i+))~~ (a) Devote time to a specific employment or training;

14 ~~((+ii+))~~ (b) Remain within prescribed geographical boundaries and
15 notify the court or the community corrections officer before any change
16 in the offender's address or employment;

17 ~~((+iii+))~~ (c) Report as directed to a community corrections
18 officer;

19 ~~((+iv+))~~ (d) Pay all court-ordered legal financial obligations;

20 ~~((+v+))~~ (e) Perform community restitution work;

21 ~~((+vi+))~~ (f) Stay out of areas designated by the sentencing court;

22 ~~((+vii+))~~ (g) Such other conditions as the court may require such
23 as affirmative conditions.

24 ~~((+3+))~~ (8)(a) The court may bring any offender sentenced under
25 this section back into court at any time on its own initiative to
26 evaluate the offender's progress in treatment or to determine if any
27 violations of the conditions of the sentence have occurred.

28 (b) If the offender is brought back to court, the court may modify
29 the terms of the community custody or impose sanctions under (c) of
30 this subsection.

31 (c) The court may order the offender to serve a term of total
32 confinement within the standard range of the offender's current offense
33 at any time during the period of community custody if the offender
34 violates the conditions of the sentence or if the offender is failing
35 to make satisfactory progress in treatment.

36 (d) An offender ordered to serve a term of total confinement under
37 (c) of this subsection shall receive credit for any time previously
38 served under this section.

1 ~~(9) If ((the)) an offender ((violates any of the sentence~~
2 ~~conditions in subsection (2) of this section or))~~ sentenced to the
3 prison-based alternative under subsection (5) of this section is found
4 by the United States attorney general to be subject to a deportation
5 order, a ~~((violation))~~ hearing shall be held by the department unless
6 waived by the offender(~~-~~

7 ~~(a) If the department finds that conditions have been willfully~~
8 ~~violated, the offender may be reclassified to serve the remaining~~
9 ~~balance of the original sentence.~~

10 ~~(b))~~, and, if the department finds that the offender is subject to
11 a valid deportation order, the department may administratively
12 terminate the offender from the program and reclassify the offender to
13 serve the remaining balance of the original sentence.

14 ~~((4) The department shall determine the rules for calculating the~~
15 ~~value of a day fine based on the offender's income and reasonable~~
16 ~~obligations which the offender has for the support of the offender and~~
17 ~~any dependents. These rules shall be developed in consultation with~~
18 ~~the administrator for the courts, the office of financial management,~~
19 ~~and the commission.~~

20 ~~(5))~~ (10) An offender ~~((who fails to complete the special drug~~
21 ~~offender sentencing alternative program or who is administratively~~
22 ~~terminated from the program shall be reclassified to serve the~~
23 ~~unexpired term of his or her sentence as ordered by the sentencing~~
24 ~~court and))~~ sentenced under this section shall be subject to all rules
25 relating to earned release time with respect to any period served in
26 total confinement. ~~((An offender who violates any conditions of~~
27 ~~supervision as defined by the department shall be sanctioned.~~
28 ~~Sanctions may include, but are not limited to, reclassifying the~~
29 ~~offender to serve the unexpired term of his or her sentence as ordered~~
30 ~~by the sentencing court. If an offender is reclassified to serve the~~
31 ~~unexpired term of his or her sentence, the offender shall be subject to~~
32 ~~all rules relating to earned release time.))~~

33 (11) Costs of examinations and preparing treatment plans under
34 subsections (2) and (3) of this section may be paid, at the option of
35 the county, from funds provided to the county from the criminal justice
36 treatment account under RCW 70.96A.350.

1 NEW SECTION. **Sec. 2.** This act applies to sentences imposed on or
2 after the effective date of this act.

3 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2005.
 Passed by the House April 19, 2005.
 Passed by the Senate April 12, 2005.
 Approved by the Governor May 13, 2005.
 Filed in Office of Secretary of State May 13, 2005.